IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 890 OF 2003

With

CIVIL APPLICATION NO. 2986 OF 2003
In
FIRST APPEAL NO. 890 OF 2003

With
CROSS OBJECTION NO. 133 OF 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE AHMEDABAD ELECTRICITY COMPANY LIMITED - Appellant(s)

Versus

BAIRAJBEN, WD/O MOTIJI BALDEVJI & ORS.- Respondent(s)

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Appearance :
MR. K.B. PUJARA for Appellant(s).
MR. SATYAM Y. CHHAYA for Respondent(s) : 1 - 5.
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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

and

HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 03/10/2005

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. Present is an appeal under Section-96 of the Code of Civil Procedure, 1908 against Judgement and Decree dated 26th March, 2003 passed in Civil Suit No.851 of 1991 by the learned Judge, City Civil Court No.15, Ahmedabad, at the instance of the original defendant, M/s. Ahmedabad Electricity Company Limited ("the Electricity Company" in short).

2. The facts necessary for disposal of the present appeal are that the original plaintiffs, Bairajbhen - widow of the deceased and other successors of the deceased Motiji Baldevji, filed a suit for recovery of Rs.4,95,000/- as damages in view of the death of Motiji Baldevji by electrocution. It is the case of the plaintiffs that on 21st March, 1990 at about 9:15 p.m., the deceased went out of his house for hanging his wet towel on a hanging wire; he suddenly suffered an electrical shock and died of electrocution. Though the deceased was rushed to the Civil Hospital, but, he could not be revived to life as he was already dead. The plaintiffs filed the suit submitting that the deceased was the bread-winner of the family and because of the negligence of the Electricity Company, the Company must be held answerable to the claim of the plaintiffs.

2.1 On Notice, the defendant-Company appeared and filed its written statement. It was stated in the written statement that the man died of electrocution, but, the spot inspection and the visit of the Electrical Inspector to the place of incident and the place, from where the current had leaked, would show that after the supply of one of the consumers was disconnected, the said consumer was stealthily extracting the energy by method of hooking; the said person had connected a live wire to the electrical fan, which was attached with

an iron rod to the iron roof; the fan was faulty and as such, the current flared up everywhere. It was also the case of the defendant that as one end of the wire was tied up with the said roof, the deceased got electrocuted. The defence was that because of the action of the third party in stealing the electricity and using the bad equipment, the current leaked out and the deceased died of electrocution, the Electricity Company could not be held liable.

2.2 The parties, after framing of the issues, submitted a list of witnesses, examined their witnesses and also produced documentary evidence. It is to be noted that the defendant-Company examined the Electrical Inspector, who had visited the spot of the death and the house from where the current had leaked.

2.3 It appears that after the parties led their evidence, the attention of the Court was focussed to only one judgement of the Supreme Court in the matter of ***M.P. Electricity Board vs. Shail Kumari & Ors.***, reported in ***(2002) 2 SCC 162***, wherein the Court had observed that rule of liability of the State Electricity Board is absolute and the exception of `act of stranger' to the rule of strict liability was not attracted in the said case.

It appears that following the said judgement of the Supreme Court and the observations made in it, the Court below observed that the liability was absolute and the principles of `act of stranger' would not apply.

The said judgement of the Supreme Court in the matter of ***M. P. Electricity Board vs. Shail Kumari*** (*supra*) has been explained by the Supreme Court in the matter of ***SDO Grid Corporation of***

Orissa Ltd. & Ors. vs. Timudu Oram, reported in ***(2005) 6 SCC 156***. In the said matter, the Supreme Court has observed that in a given case, the liability may be absolute or may not be absolute. The Supreme Court has observed that the death by electrocution in itself would not be sufficient to prove that there was some negligence on the part of the State Electricity Board.

3. In the present matter, the learned Counsel for the appellant submits that from the statement of Mr.Sompura, Electrical Inspector, it would clearly appear that he had visited the spot, he had seen the equipment/fan and had also opined that there was no leakage of current from the overhanging wire leading to the meter, but, the leakage was found with the megger testing in the fan. The submission is that if the equipments used by the consumer are leaking current, then, the Electricity Company, which is supplying the electricity, cannot be held liable.

4. Learned Counsel for the respondents, on the other hand, submitted that from the facts, it would clearly appear that from a common D.P., certain overhanging wires/cables were taken and for each supply, a trip was given and thereafter, the live wires were taken to the house wherein the supply was to be made. His submission is that in House No.7, as no inspection was made and no proceedings of panchnama were taken, it would not be proper on the part of the appellant to say that they were not at fault. It is also submitted by him that the plaintiffs, being hopeful of the judgement in their favour in light of the judgement of the Supreme Court in the matter of ***M.P. Electricity Board vs. Shail Kumari*** (*supra*), did not lead any further evidence, as they were sure to succeed on the principles of absolute liability.

5. After going through the complete records and the judgement of the Supreme Court in the matter of ***SDO Grid Corporation of Orissa Ltd. & Ors. vs. Timudu Oram*** (*supra*), we are of the opinion that the decree, in a cavalier manner, on the principles of absolute liability, could not be made. The principles of strict liability, as were pronounced in the matter of ***M.P. Electricity Board vs. Shail Kumari*** (*supra*), have been explained and distinguished in the matter of ***SDO Grid Corporation of Orissa Ltd. & Ors. vs. Timudu Oram*** (*supra*).

6. After going through the complete records, especially, cross examination of Mr.Sompura - defence witness, we are of the opinion that the plaintiffs, in fact, were under a *bona fide* impression that they were sure to succeed in the matter and, therefore, they did not conduct the matter by thorough cross examination.

7. Taking into consideration the totality of the circumstances and the statements of the Electrical Inspector, Mr.Sompura, and the judgements of the Supreme Court, we are of the opinion that the judgement and decree delivered by the Court below deserve to be set aside, but, the suit still cannot be dismissed, as it deserves to be remanded back to the Court below for further trial.

8. Learned Counsel for the respondents submits that as the Court is remanding the matter back to the trial Court for further trial and disposal in accordance with law, proper opportunity to lead evidence be given to the plaintiffs and they be also given opportunity to recall the defendant's witnesses for further cross

examination.

9. In our opinion, such liberty must be given to the plaintiffs and the liberty should also be extended in favour of the defendant. We hereby direct that the evidence, which has already been brought on record, would be the evidence in the trial and if the parties wish to lead any further evidence, documentary or oral, they may produce the same in the Court and if they make an application for recall of the witnesses, who have already been examined or cross examined, then, the Court shall recall such witnesses for further cross examination or examination.

10. From the records, it appears that under the directions of this Court, the Electricity Company has deposited the full amount of the decree, out of which 25% has been withdrawn by the claimants. As we are allowing the appeal, we direct that the amount lying in balance with the Court, be refunded back to the Electricity Company, but, the amount, which has already been withdrawn by the plaintiffs, may be retained by them till the final disposal of the suit and in case their suit is decreed, then, this amount may be appropriated in the decree itself. As the suit relates to the compensation on account of death of the bread-winner, we request the trial Court to dispose of the matter finally within a period of six months from the date of appearance of the parties. The parties shall appear before the trial Court on 24th October, 2005. The records and proceedings of the Court below, as have been requisitioned by this Court, be sent back to the trial Court with a copy of this order, enabling the trial Court to understand as to what it has to do in the matter.

11. The appeal is allowed. The judgement and decree is set aside. No order as to costs.

12. Consequently, Civil Application No.2986 of 2003 and Cross Objection No.133 of 2005 are disposed of. Rule is discharged.

[***R.S.Garg, J.***]

[***K.M. Mehta, J.***]

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